Northwest IMMIGRANT RIGHTS Project

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May 14, 2025

VIA ACMS

Molly C. Dwyer, Clerk of Court
Office of the Clerk
The James R. Browning Courthouse
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

RE: *Padilla v. U.S. Immigration and Customs Enforcement*, No. 24-2801
Oral argument scheduled for May 21, 2025
Panel: Judges Berzon, Friedland, and Mendoza, Jr.
Letter Filed Pursuant to Federal Rule of Appellate Procedure 28(j)

Dear Ms. Dwyer:

Plaintiffs-Appellees submit this letter to apprise the Court of the Federal Register Notice by the Acting Secretary of Homeland Security, *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). This Notice exercises the Secretary's full authority under the Immigration and Nationality Act ("INA") to subject noncitizens to expedited removal, including noncitizens who have entered the country and cannot "affirmatively show[], to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility." 90 Fed. Reg. at 8139. The Notice thus significantly expands expedited removal from its previous limitation to noncitizens apprehended within 100 miles of a land border and who are continuously present for less than 14 days. *See id*.

This expansion undermines the government's reliance on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), to argue that Plaintiffs lack due process rights. *See* Dkt. 16.1 at 31–41. As a result of the Notice, the government's policy of detention without a bond hearing is no longer limited, as the

government stated in its opening brief, to "noncitizens apprehended soon after entering illegally into the United States." *Id.* at 31. Instead, it applies to noncitizens who have been living in the country for *up to two years*. Thus, even assuming *Thuraissigiam* addresses Plaintiffs' due process claim—a point the district court rejected and that Plaintiffs contest, *see* Dkt. 22.1 at 29–36—the decision clearly does not apply here. The Court's conclusion about the rights of a noncitizen apprehended "25 yards into U. S. territory" and who could not "be said to have 'effected an entry,'" *Thuraissigiam*, 591 U.S. at 139–40 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)), says nothing about the due process rights of noncitizens who have already entered the United States, much less people here for weeks, months, or nearly two years.

Respectfully submitted,

s/ Matt Adams
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cc via ACMS: All counsel of record